

### **REMARKS**

This responds to the Office Action mailed on September 8, 2004.

No claims are amended. Claims 1-38 are now pending in this application.

The appendix has been added to the specification starting before the claims. Thus, while it is still referred to as an appendix, it is actually part of the specification. No new matter is introduced, and since it is still referred to as an appendix, no further modifications to the specification are believed required. Also, since it is not a code listing, it is believed that the reference to section 608.05(a) of the MPEP is not applicable.

### **§103 Rejection of the Claims**

Claims 1-38 were rejected under 35 USC § 103(a) as being unpatentable over Atlas et al. ('Slack Stealing Job Admission Control') in view of Anderson et al. (U.S. Patent No. 5,448,735). This rejection is respectfully traversed, as the combination of references does not establish a prima facie case of obviousness, and the references are not properly combinable.

Atlas, in addition to not taking into account a task that is inactivating also does not appear to allocate slack to tasks in order of priority. The Examiner cites page 4, lines 36-37 as standing for the proposition that slack is allocated to tasks in order of priority as recited in claim 1. However, that language simply indicates that "the actual slack available for a given job can be determined. With this information, job admission control can take place." Previously, about line 21, Atlas states: "This allows the server to dole out the slack to the aperiodic tasks so that no periodic tasks will miss their deadlines." This language suggests a very different approach than allocating the slack based on order of priority. Since this element is lacking from Atlas, and also not described in Anderson, which does not deal with slack, a prima facie case of obviousness has not been established, and the rejection should be withdrawn.

The references are also not properly combinable. The Office Action must provide specific, objective evidence of record for a finding of a suggestion or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). The Office Action stated ""to ensure that a task can be activated or deactivated at anytime. By being

able to activated or deactivated as task, the user can determine and use excess slack thus making the entire system more efficient.” which is a mere conclusory statement of subjective belief. Applicant respectfully submits that the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. There is no suggestion identified from the prior art, only an unsupported statement of objective intent, that at best is based on the actual combination made in the present application.

An invention can be obvious even though the suggestion to combine prior art teachings is not found in a specific reference. *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992). At the same time, however, although it is not necessary that the cited references or prior art specifically suggest making the combination, there must be some teaching somewhere which provides the suggestion or motivation to combine prior art teachings and applies that combination to solve the same or similar problem which the claimed invention addresses. One of ordinary skill in the art will be presumed to know of any such teaching. (See, e.g., *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) and *In re Wood*, 599 F.2d 1032, 1037, 202 USPQ 171, 174 (CCPA 1979)).

The references are directed at solving very different problems. Atlas is directed to a slack-stealing job admission control system for scheduling periodic firm-deadline tasks with variable resource requirements as described in the Abstract.

Anderson groups tasks together to avoid unnecessary loading/saving of data in common storage areas. These are very different aspects of task scheduling that utilize very different techniques. Atlas is concerned with stealing slack time and allocating it to other tasks, while Anderson promotes efficient resource utilization by grouping tasks. There is no suggestion in either reference that the different techniques may be combined in a single system, and in fact, there is no assurance of success in attempting to make the combination since they solve very different problems.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claims 2-9, which depend from claim 1, directly or indirectly, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Independent claims 10, 11, 20, 21, and 29, along with their associated dependent claims, were rejected based upon the same grounds as independent claim 1. Applicant respectfully asserts that these claims are all patentable over any suggested combination of Atlas and Anderson for the reasons present earlier regarding independent claim 1. Applicant respectfully requests that the rejection of claims 10-38 under 35 U.S.C. §103(a) as being unpatentable over Atlas in view of Anderson should be withdrawn.

Applicant considers additional elements and limitations of claims 1-38 to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

**CONCLUSION**

Applicant respectfully requests entry of this amendment to at a minimum reduce the number of issues for appeal. Applicant submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

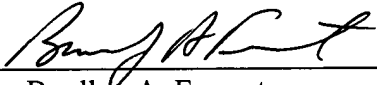
Respectfully submitted,

PAMELA A. BINNS

By his Representatives,

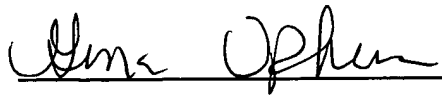
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Date 11/8/2004

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 8 day of November, 2004.

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